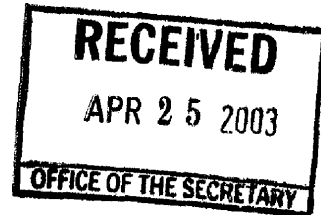




April 24, 2003

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609



Re: NASD Proposed Interpretive Material
Regarding the Use of Investment Analysis
Tools; File No. SR-NASD-2003-13

Dear Mr. Katz:

The Investment Company Institute' appreciates the opportunity to comment on the proposal by the National Association of Securities Dealers (NASD) to adopt Interpretive Material (IM) under NASD Rule 2210(d)(2)(N). The proposed IM would allow members to provide "investment analysis tools" to their customers provided that (1) the tool complies with the requirements set forth in the IM, (2) the member using the tool or any related written reports or sales material provides specified disclosures regarding the tool, and (3) at least 30 days prior to first use, the member provides the NASD's Advertising Regulation Department access to the tool and files with the NASD any template for written reports produced by, or sales material concerning, the tool.

I. COMMENT PERIOD

Before commenting on the proposed IM, the Institute is compelled to express its concern with the insufficient amount of time the Commission has provided interested persons to comment on the proposal – *i.e.*, the bare minimum 21-day period. As the Institute has noted several times in the past,² such a short comment period makes a mockery of the public comment

¹ The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,912 open-end investment companies ("mutual funds"), 554 closed-end investment companies and 6 sponsors of unit investment trusts. Its mutual fund members have assets of about \$6.254 trillion, accounting for approximately 95% of total industry assets, and 90.2 million individual shareholders.

² See, *e.g.*, Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Mr. Jonathan G. Katz, Secretary, U.S. securities and Exchange Commission, dated April 15, 2003 (File No. SR-NASD-2002-141)(Proposed Amendments to NASD Rules Regarding Board Independence and Independent Committees); Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Mr. Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated April 6, 2001 (File No. S7-03-01)(Proposed Rule Changes of Self-Regulatory

III. COMMENTS ON THE PROVISIONS OF THE IM

A. Conditions Imposed on the Tool

As revised, the proposed IM would require an investment analysis tool to use "a mathematical process that can be audited and reviewed."⁴ Neither the IM nor the Commission's release discusses what is intended by the requirement that the tool use a mathematical process that can be "audited." Inasmuch as we assume that this condition is designed to assure a level of transparency in how a given tool works, the "audit" requirement seems redundant of the requirement that the tool use a mathematical process that can be "reviewed." We therefore recommend that the words "audited and" be deleted. At the very least, the NASD should clarify that this condition does not contemplate the need for members to engage a third party to conduct an audit of the tool's mathematical process.

B. Disclosure Requirements

1. Disclosure of Characteristics of Securities Not Considered

The Institute is pleased that many of the disclosure requirements originally proposed by the NASD have been revised as recommended by the Institute in order to clarify the provisions of the IM or to eliminate disclosure that did not appear necessary to protect investors. Along these lines, we recommend an additional change to the disclosure requirements to eliminate unnecessary disclosure. As proposed, subsection (c)(6) would require a member to describe the universe of investments considered in the analysis, include information about the tool's selection process, and state that "other investments not considered [by the tool] may have characteristics similar or superior to those being analyzed." While we support disclosure of the universe of investments considered and information concerning the tool's selection process, we continue to oppose requiring a statement that there are other investments not considered that may have characteristics similar or superior to those analyzed by the tool. As we stated in our previous comment letter, in light of the IM's proposed requirement that a member disclose the universe of investments considered in the analysis, investors would be put on notice that not *all* investments offered anywhere were considered.⁵

2. Scope of Disclosure Requirements

As originally proposed, the disclosure requirements set forth in the IM would apply to the investment analysis tool as well as to any "related sales material."⁶ In the current version of the proposed IM, these disclosure requirements would also apply to any "written reports

⁴ See proposed IM subsection (c)(3).

⁵ We additionally note that a similar disclosure obligation is not imposed on a broker that recommends a security to a client.

⁶ The Institute is pleased that the IM has been revised to clarify that sales material that contains only an incidental reference to an investment analysis tool does not need to include the disclosures required by the IM or be filed with the NASD, unless otherwise required by Rule 2210.

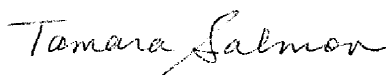
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requirements under Rule 2210 not apply to any amendments to the tool, its related sales material, or the written reports indicating the tool's results that are either non-substantive or merely updates to pre-existing templates that were previously approved by the NASD. This approach would be consistent with the NASD's treatment of statistical updates to members' websites.⁹

* * * *

The Institute appreciates the opportunity to provide these comments on the NASD's proposed IM. If you have any questions concerning them, please contact the undersigned either by phone at (202) 326-5825, or by e-mail at tamara@ici.org.

Sincerely,



Tamara K. Salmon
Senior Associate Counsel

cc: Paul F. Roye, Director
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US. Securities and Exchange Commission

Nancy C. Libin, Assistant General Counsel
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Joseph P. Savage, Counsel
Investment Companies Regulation, Regulatory Policy and Oversight

NASD

⁹ See, e.g., Letter from Thomas M. Selman, Senior Vice President, NASD Regulation, Inc. to Forrest R. Foss, Vice President and Associate Legal Counsel, T. Rowe Price Associates, Inc., dated January 28, 2002.